

The Certificate of Need Process

For larger energy projects, an applicant must receive a Certificate of Need (CON) in conjunction with a routing or siting permit. Minn. Stat. 216B.2421 defines the specific transmission lines, generating facilities, wind farms and pipelines requiring a CON. Through the CON proceedings the applicant must demonstrate using a number of factors prescribed in the rules that the proposed facility is in the best interest of the state's citizens. The applicant must also demonstrate there is not a more prudent and reasonable way than the proposed project to provide the stated goals.

The applicant must first submit an application for a CON to the Public Utilities Commission (PUC). The PUC will then make a determination as to the completeness of the application. If the Commission deems the application complete, then the process continues with the Department of Commerce (DOC) initiating the Environmental Review Process and the PUC and Office of Administrative Hearings (OAH) initiating the contested case process.

Upon the submission of an application, the DOC must provide notice of the application submission. Additionally the department must hold a public meeting within 40 days of the application submission. At this public meeting participants must be able ask questions of and comment on the proposed project. In addition, meeting participants may also help scope the ultimate environmental report by suggesting alternatives he/she believes should be considered. Participants may also suggest possible adverse effects of an intended project they believe the department should consider in their environmental review. After this public meeting, the department shall allow individuals another twenty days to comment via writing on an application. At the conclusion of this comment period, the department shall make a final

decision on the scope of the environmental report and produce a report within such guidelines.

While the DOC is completing the tasks described in the preceding paragraph, the PUC will simultaneously complete the following tasks associated with composing a record for a contested case hearing. The PUC must first order a contested case; a contested case hearing is warranted if there are disputed issues of material fact.

If it is determined, that a contested case is not warranted then the PUC will initiate an informal process. This informal process will include at least one public hearing that overseen by an ALJ. At the conclusions of this informal process the ALJ will produce an summary of testimony report.

If the PUC decides that a contested case is warranted the PUC must request an Administrative Law Judge (ALJ) from the OAH. The duties of the ALJ during these proceedings are described in 1400.5500. Once the OAH hearings assigns an ALJ for a contested case hearing the parties will first meet at a pre-hearing conference. At this pre-hearing conference, the parties will discuss procedural issues including an intervention deadline for requesting formal party status, discovery, locations of public and evidentiary hearings and a schedule for a hearing.

Next the hearing and meeting phase of the contested case proceeding will commence. If possible, the commission shall hold a public meeting prior to any evidentiary hearings associated with a contested case proceeding. The number and location of these meetings will vary dependent upon the size and location of the proposed project. At this meeting, the public shall be offered the chance to comment and ask question on the proposed project. During the evidentiary hearing, the formal parties may present witnesses and

offer testimony. Additionally, the parties may also cross-examine witnesses the other parties offer. During this period, there is also an opportunity to comment on a particular project via the mail or email. The comments and evidence gathered at any of the venues described previously will be entered into the record of the hearing. These meetings may be part of a joint proceeding for both the CON and route permit.

At the conclusion of the evidentiary hearing, public meetings, and comment period the ALJ produces an report. This report must be based on evidence that has been entered into the record. The ALJ will provide notice to interested parties when the report is made available. After the completion of the ALJ's report parties have 20 days to file exceptions to the report. At the close of the exceptions period parties have an additional 10 days to files response to other parties exceptions. Next the PUC will hold a final meeting where it will be determined whether a CON will be issued. At this meeting the PUC will either follow the recommendations of the ALJ or it will rule contrary providing justification.

Specific Requirements for HVTLS: Prior to submitting an application for a certificate of need, the applicant must first file a notice plan with the commission. The applicant must file this notice plan three months before filing the actual certificate of need application. Following the submission of a notice plan there must be time for individuals to comment on the proposed notice plan.